No. 16-1027

IN THE

Supreme Court of the United States

RYAN AUSTIN COLLINS, *Petitioner*,

v.

COMMONWEALTH OF VIRGINIA, *Respondent*.

On Writ of Certiorari
to the Supreme Court of Virginia

Brief *Amicus Curiae* of Conservative Legal Defense and Education Fund, United States Justice Foundation, Downsize DC Foundation, DownsizeDC.org, Restoring Liberty Action Committee, Gun Owners Foundation, Gun Owners of America, Inc., Citizens United Foundation, Citizens United, The Heller Foundation, and Policy Analysis Center in Support of Petitioner

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November 20, 2017

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INTEREST OF THE *AMICI CURIAE*[1]

Conservative Legal Defense and Education Fund, United States Justice Foundation, Downsize DC Foundation, Gun Owners Foundation, Citizens United Foundation, The Heller Foundation, and Policy Analysis Center are nonprofit educational and legal organizations, exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code ("IRC"). DownsizeDC.org, Gun Owners of America, Inc., and Citizens United are nonprofit social welfare organizations, exempt from federal income tax under IRC section 501(c)(4). Restoring Liberty Action Committee is an educational organization. These organizations were established, *inter alia*, for purposes related to participation in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

These *amici* have been active in the protection of the Fourth Amendment. Many of these *amici* filed two *amicus* briefs in this Court in United States v. Jones, as well as filing the only *amicus* brief in support of the petition for certiorari in this case.[2]

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[1] It is hereby certified that counsel for the parties have consented to the filing of this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] Brief *Amicus Curiae* of United States Justice Foundation, *et al.* in Collins v. Virginia (Mar. 27, 2017).

SUMMARY OF ARGUMENT

Petitioner's brief presents a compelling argument as to why the so-called "automobile exception" should not be permitted to trump the Fourth Amendment's protections of the home and its curtilage in this case. In reality, though, no judicially created "exception" should be permitted to trump any of the Fourth Amendment's protections. Yes, the home is "first among equals," but "persons," "papers," and "effects" are just that — equals — and thus equally deserving of this Court's protection.

Over several decades, this Court's automobile exception has been invoked to allow the Government to run roughshod over Fourth Amendment protections. In this case, Virginia's highest court has permitted an exception that applies to an automobile to become an exception that now permits the police to search and seize without a warrant any "person," "house," "paper," or "effect," if in the vicinity of an automobile — or a motorcycle.

In 1985, this Court took a pragmatic approach to the Fourth Amendment in California v. Carney — applying the automobile exception based on the perceived needs of 20th century law enforcement to carve out an exception to the Fourth Amendment's warrant requirement carefully crafted in the 18th century. Relying on an atextual "expectation of privacy" standard, this Court labored to make it easier for the police to do their job, disregarding the important limitations imposed on the Government by the framers and the people in the U.S. Constitution.

In 2012, however, this Court rejected the primacy of the "expectation of privacy" analysis in Fourth Amendment cases, returning to First Principles in United States v. Jones. There, the Court faithfully applied the Constitution's unchanging 18th century principles to a 21st century problem — and established that the Fourth Amendment's protections apply just as strongly today as they did when adopted. Then, this Court protected an automobile — an "effect" — from warrantless interference of the police in placing a GPS device, based on the common-law trespass rule, which is equally protective of real property and personal property, including automobiles, which have already been deemed to be "effects."

Although at one time at common law "immoveable" property was often given greater protection than "moveable" property, no such distinction existed by 1766 when Blackstone wrote his Commentaries. There, he explained that both categories of property were "regard[ed] ... nearly, if not quite, equal...." This Court recognized in Jones, and the next year reiterated in Florida v. Jardines, that its "reasonable-expectation-of-privacy" test must not be allowed to displace or diminish the common-law trespassory test that long preceded it.

At each stage of this litigation, Petitioner has made a Jones-based property argument — that, by entering the curtilage of his home and rummaging around therein, the police violated the Fourth Amendment's property rights "baseline." The trial court did not understand this argument, the Court of Appeals dismissed it without serious consideration,

and the Supreme Court of Virginia ignored it. Hoping for a similar result, the Government has attempted to divert the focus of this Court from the central Fourth Amendment property issue. It is now the duty of this Court to restore order in Virginia and again demand the Fourth Amendment as written be honored by the Government.

ARGUMENT

I. THE AUTOMOBILE EXCEPTION CONFLICTS WITH FOURTH AMENDMENT PROPERTY RIGHTS.

A. Automobiles and Other Moving Vehicles Are Protected Fourth Amendment "Effects."

In his Summary of Argument, Petitioner contends that the Virginia Supreme Court erred in adopting "a 'bright-line' rule that the automobile exception trumps the Fourth Amendment protections for the home and curtilage." Brief for Petitioner ("Pet. Br.") at 8. These *amici* agree. As Petitioner points out, "[t]he Fourth Amendment presumptively requires a warrant to search a home" including "the curtilage, which is 'part of the home itself for Fourth Amendment purposes.'" Pet. Br. at 8 (citing Florida v. Jardines, 569 U.S. 1, 6 (2013)). In fact, this same presumption should apply equally to "persons ... papers, and effects...."

To be sure, Jardines acknowledges "when it comes to the Fourth Amendment, the home is first among equals" (*id.* at 6) — as Petitioner avers (Pet. Br. at 10)

and as the constitutional text attests. *See* United States v. Jones, 565 U.S. 400, 404-05 (2012). However, in Jones, the Court emphasized that the Fourth Amendment protects "private property" generally, spelling out four independent categorical property interests, none of which is less important than another. *See id.* at 404.

Even more aptly here, the Jones Court specifically ruled that "[i]t is beyond dispute that a vehicle is an 'effect' as that term is used in the Amendment."[3] *Id.* at 404. At issue in Jones was whether it was permissible for the Government to conduct a warrantless search by attaching a GPS device to an automobile. Unhesitatingly, the Court ruled in the negative, without voicing any regard for the fact that the tracking device was being used "to monitor the vehicle's movements on public streets." *Id.* at 402. Without discussing the "automobile exception," the Court ruled that the Government's intrusion on Jones's vehicle violated the Fourth Amendment's "common-law trespass" rule, which is equally protective of personal and real property. *Id.* at 404-05.

Just as there is no modifier limiting "houses," there is no modifier attached to "persons," "papers," or "effects." Whatever presumption applies to "houses" should apply to the others. Indeed, the Jones Court ruled, the "text of the Fourth Amendment reflects its close connection to property," and the common law of trespass, whether applied to real property or personal

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[3] *See* Pet. Br. at 26.

property, would offer the same constitutional protection. *Id.* at 405. As Petitioner contends here, the automobile exception not only "trumps Fourth Amendment protections for the home and curtilage" (Pet. Br. at 1), but also erases the Amendment's warrant protection of an important category of "effects" just because, in the Court's eyes, motor vehicles are "readily mobile," offering only a "fleeting" target for a constitutionally valid search. *See* California v. Carney, 471 U.S. 386, 390-91 (1985).

B. The Automobile Exception Is Based on the Erroneous Claim that Readily Mobile "Effects" Deserve Less Fourth Amendment Protection.

As pointed out by Petitioner, the Supreme Court explained in Carney that the automobile exception is supported by two rationales. Pet. Br. at 18. First, the Court stressed that the automobile's intrinsic "ready mobility" necessitated less Fourth Amendment protection because, as a practical matter, the automobile "'creates circumstances of such exigency that ... rigorous enforcement of the warrant requirement is impossible.'" Carney at 391. Second, the Court added, "'less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office.'" *Id.* at 391.

Throughout his brief, Petitioner has ably argued that neither of these rationales supports the application of the automobile exception to the facts of this case. *See* Pet. Br. at 10-38. Although this Court

could readily reverse with a decision limited to the facts of this case, these *amici* urge this Court to fully implement the venerable Fourth Amendment property principles recently rediscovered and restored to their rightful place in Jones and Jardines. Although Petitioner rightly argues that, like Jardines concerns the Fourth Amendment's protection of his property interest in the curtilage of the home (*see* Pet. Br. at 8-15 and 33-37), he does not focus on the Jones ruling upon which Jardines rests. *See* Pet. Br. at 26 and 36. A careful examination of both Jones and Jardines now reveals that both rationales upon which this Court has relied to support the automobile exception conflict directly with the property principles laid down and applied in those two watershed cases.

As the 1985 Carney Court explained, the automobile exception did not originate with an examination of the Fourth Amendment text, but grew out of a series of cases wherein the Court had grafted into the text an exception on the pragmatic ground that the "ready mobility" of the automobile would make it too difficult for the Government to enforce the law and at the same time conform its action to the Constitution's warrant requirement. *See* Carney at 390-91.

In Jones, the Court took a very different approach, beginning and ending its analysis with First Things — the original meaning of the Fourth Amendment text. *See* Jones at 404. To that end, Justice Scalia noted that the Government had, by the installation of the GPS device on a privately owned motor vehicle, "physical[ly] intru[ded]" upon the owner's private

property which "would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted." *Id.* at 404-05. And it was that original meaning of the Fourth Amendment that controlled the installation of the GPS device, not the felt necessities of modern law enforcement.

The contrast of methodology and constitutional philosophy between the 1985 Carney Court and the 2012 Jones Court could not be more stark. The Carney majority focused on tailoring a late 18th century covenant protecting individual rights, trimming it to fit the current policy preferences of law enforcement. The Jones majority focused on the judicial task of applying the permanent principles as written in a 1791 text to modern law enforcement technological developments. In 2012, the Constitution-as-it-was-written won out, restoring "Fourth Amendment jurisprudence [to its historic] tie[] to common-law trespass." Jones at 405. So after Jones, the threshold inquiry is an historic one, a search for the original principles embraced by the text of the Fourth Amendment.[4] According to Jones, for most of our history, the Fourth Amendment was understood to embody an aversion for government trespass upon the areas ("persons, houses, papers, and effects") it enumerates. *Id.* at 405.

If the automobile exception is to be justified according to the property principle embraced in Jones,

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[4] *See* H. Titus and W. Olson, "U.S. v. Jones: Reviving the Property Foundation of the Fourth Amendment," 3 CASE W. RES. JOURNAL OF LAW, TECHNOLOGY & INTERNET 243 (Jan. 2013).

there must be evidence in the common law at the time of the founding of a principled distinction between "moveable" and "immoveable" property. No such evidence has been offered. Rather, there is excellent authority to support the absence of such a distinction.

In his chapter on the rights of things personal, Blackstone introduces his topic with the observation that there was a time when "things *moveable* [were] not [as] esteemed [as] things that are in their nature more permanent and *immoveable*," but that those days had faded, and by the 18th century Blackstone could write that there was ample evidence of comparability between the "more permanent and *immoveable*, as lands, and houses" and "all a man's goods and chattels":

> since the introduction and extension of trade and commerce, which are entirely occupied in this species of property, and have greatly augmented it's quantity and of course it's value, we have learned to conceive different ideas of it. Our courts now regard a man's personalty in a light nearly, if not quite, equal to his realty.... [2 W. Blackstone, Commentaries on the Laws of England, 384-85 (U. Chi. Facs. ed. 1766).]

Elaborating further, Blackstone explained that:

> Chattels personal are, properly and strictly speaking, things *moveable;* which may be annexed to or attendant on the person of the owner, and carried about with him from one

> part of the world to another. Such are animals, household-stuft, money, jewels, corn, garments, and every thing else that can properly be put in motion, and transferred from place to place. [*Id.* at 387.]

Although there was a categorical distinction at common law between immoveable real property, including "houses," and moveable things, such as "papers" and "effects," the common law of trespass applied to them both. And, as Jones declared, since "our Fourth Amendment jurisprudence has been tied to common-law trespass, at least until the latter half of the 20th century," it was time to return to the constitutional text which made no distinction between moveable and immoveable property, treating "persons, houses, papers, and effects" as equally protected from unreasonable searches and seizures.

Applying the Fourth Amendment and the Jones decision to a search of email attachments (*i.e.*, digital papers and effects), then-Judge Gorsuch explained: "the warrantless opening and examination of (presumptively) private correspondence that could have contained much besides potential contraband for all anyone knew ... seems pretty clearly to qualify as exactly the type of trespass to chattels that the framers sought to prevent when they adopted the Fourth Amendment." United States v. Ackerman, 831 F.3d 1292, 1307 (10th Cir. 2016). And, as Justice Alito noted in his concurring opinion in Jones: "At common law, a suit for trespass to chattels could be maintained if there was a violation of 'the dignitary interest in the inviolability of chattels'...." Jones at 419, n.2 (Alito, J.,

concurring). Truly, adherence to Jones leaves no room for the automobile exception.

C. The Automobile Exception Cannot Be Justified by an Appeal to a "Lesser Expectation of Privacy."

As Petitioner points out in his brief, the Carney Court attempted to bolster the automobile exception by the proposition that, because "automobiles carry a lower expectation of privacy," the exception still applies, even if a particular motor vehicle is not "readily mobile." *See* Pet. Br. at 18. Petitioner rebuts the applicability of this rationale to the facts of this case involving a motorcycle parked within the curtilage of a home in which the owner has a high expectation of privacy. *See, e.g.*, Pet. Br. at 15-16. In reality, though, the Jones property principle does not require the Court even to reach the privacy issue.

In Jones, Justice Scalia devoted a good portion of the Court's opinion to establishing that the Court's "reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test." Jones at 409. And, as Justice Sotomayor explained further in her concurrence, this Court acknowledged that "the Fourth Amendment is not concerned only with trespassory intrusions on property" (*id.* at 414):

> Rather, even in the absence of a trespass, "a Fourth Amendment search occurs when the government violates a subjective expectation of

> privacy that society recognizes as reasonable." [*Id.*]

Thus, Justice Sotomayor concluded, the Court's "reasonable-expectation-of-privacy test **augmented**, but did not displace or diminish, the common-law trespassory test that preceded it." *Id.* (emphasis added). Yet that is exactly what the automobile exception has done, and more particularly did here — negating the common-law trespassory test as applied to a motorcycle, an "effect" in its own right, and therefore, within the protective shield of the Amendment.

In Jardines, decided a year after Jones, the Court took the opportunity to reaffirm the primacy of the property principle established in Jones. It declined to consider the Florida government's argument that the Fourth Amendment was not violated because the use of a dog to investigate the curtilage of a home does not implicate any "legitimate privacy interest[s]." *Id.* at 10. In explanation, the Court reiterated what it had previously stated in Jones, that the reasonable-expectation-of-privacy test may "add" but "not subtract anything from the Amendment's protections 'when the Government *does* engage in [a] physical intrusion of a constitutionally protected area.'" Jardines at 5.

In short, Jones and Jardines preclude not just the application of the automobile exception in this case, but also preclude the application of that exception in every case because the exception's very design and effect is to "lessen" the Fourth Amendment protection against warrantless searches of automobiles. In every

such case, the automobile exception would undermine the "Fourth Amendment's property-rights baseline." Jardines at 11.

II. THIS CASE REQUIRES THE COURT TO RE-EVALUATE THE AUTOMOBILE EXCEPTION.

A. This Case Cannot Be Decided without Application of Jones and Jardines.

No doubt, the Government very much would like this Court to resolve this case as though it were just another "reasonable expectation of privacy" case involving the "automobile exception." That approach might allow the Court to sanction the warrantless police search of the curtilage of the home, without the need to resort to the Fourth Amendment. Both the "reasonable expectation of privacy" test and the "automobile exception" are atextual — invented out of whole cloth by the Judiciary. Applying that exception, this Court could simply declare, as the court below did, that Mr. Collins had "no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view" (Collins v. Virginia, 790 S.E.2d 611, 619 (Va. 2016)) and, for that reason, the Fourth Amendment simply does not apply. Using those tests, the Court would not only bypass the text of the Fourth Amendment, but also ignore its context, its purpose, and its common-law foundation. Rather than applying the law of the Constitution, this Court could, as in the

days of the book of Judges, simply do what it feels is right in its own eyes.[5]

But this is not a case that can be resolved based on atextual "expectation of privacy" grounds. And prior "automobile exception" cases cannot be applied mechanically to this case, as if that decades-old exception exists in its own cocoon, and as though this Court's historic return to the property foundation of the Fourth Amendment had not occurred. The truth is that Jones and Jardines, have dramatically changed the legal landscape of the Fourth Amendment, particularly as it applies to intrusions onto real property.

As these *amici curiae* noted in their earlier *amicus* brief filed in support of Collins' Petition for Certiorari, Petitioner advanced a well-grounded, property-based argument in the trial court, expressly and specifically relying on both Jones and Jardines. Thereafter, Petitioner forcefully made the same argument to the Virginia Court of Appeals, to the Supreme Court of Virginia, and now to this Court. As *amici* detailed, the trial court misunderstood Jones and Jardines, the Court of Appeals casually dismissed those cases as irrelevant, and the Supreme Court of Virginia ignored them completely.[6] *See Amicus* Br. of USJF, *et al.* in Support of Pet. for Cert. at 8-9.

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[5] "In those days there was no king in Israel: every man did that which was right in his own eyes." Judges 21:25.

[6] The Virginia Supreme Court did cite Jardines in a footnote. *See* Collins at 623 n.4.

Petitioner has now, again, raised a separate and independent property-based argument to this Court. *See* Pet. at i, 10, 16-17; *see also* Pet. Br. at 13-14, 35-36. In its Brief in Opposition to the Petition for Certiorari, the Government attempted to rephrase the question presented to omit any reference to "private property." Brief in Opposition at i. Then, like the Supreme Court of Virginia below, the Government's brief did not even address the property issue, only citing Jones and Jardines once each in passing footnotes, without any description or application of those decisions, or any analysis of their application to this case.[7]

The lower courts and the Government have chosen simply to ignore Petitioner's property-based Fourth Amendment argument, perhaps not favoring the result that such a property-based analysis clearly would require, and instead hoping the foundational issue will simply pass unnoticed. It is now this Court's responsibility to faithfully apply the property rights "baseline" established in Jones and Jardines to the facts of this case, which requires a re-examination of the automobile exception.

Understanding this Court's rationale for its automobile exception is like playing a game of Whack-

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[7] But as *amici* noted previously, "how can a court decide a Fourth Amendment case about automobiles, and completely ignore Jones? And how can it decide such a case about the curtilage of a home, without even discussing Jardines?" *Amicus* Br. of USJF, *et al.* in support of Pet. Cert. at 9.

A-Mole.[8] Whenever one justification is knocked down, another pops up to take its place. *See Amicus* Br. of USJF, *et al.* in Support of Pet. for Cert. at 18, *et seq.* After years of continual expansion and pervasive application of the automobile exception, "[t]he word 'automobile'" today has become precisely what this Court promised it would not — "a talisman in whose presence the Fourth Amendment fades away and disappears." Coolidge v. New Hampshire, 403 U.S. 443, 461 (1971). This case is the most recent — and the most strained — attempt to invoke the automobile exception to circumvent the most central protections offered by the Fourth Amendment. As Petitioner puts it, "[e]ssentially, the [lower] court held that the automobile exception trumps Fourth Amendment protections for the home and curtilage." Pet. Br. at 1.

As these *amici* discussed at the petition stage, the most recent iterations of the automobile exception revolve around the notion that a person has a reduced expectation of privacy in a vehicle in a public place. *See* South Dakota v. Opperman, 428 U.S. 364 (1976). Although a person may have a reduced expectation of privacy in his car being driven on the public streets, Jones made clear that his property rights are the same wherever he or his car is located — the police may not search or seize it without a warrant simply because it is in a place accessed by the public. In that sense, the automobile exception undermines the property rights baseline — as it was applied not just by the Supreme Court of Virginia, but also across the board. The

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[8] https://www.youtube.com/watch?v=D0n8N98mpes.

automobile exception should be declared not just "merely dead," but "really, most sincerely dead."[9]

B. The Automobile Exception Cannot Be Applied to Override Fourth Amendment Protections.

The Supreme Court of Virginia below applied the automobile exception to a vehicle located on private property based on a theory of what this Court has **not** done. The court below noted that this Court has "never limited" the automobile exception and its past cases "'did not distinguish'" between public and private spaces. *See* Pet. Br. at 7-8. Of course, the fact that a 10-year-old's parents have not specifically prohibited him from borrowing his dad's Harley would be a poor argument that it is permissible to do so.

Although it is true that this Court has said the automobile exception permits the police to search a vehicle without a warrant in some circumstances, it certainly has never approved of an accompanying trespass onto and search of the curtilage of a **house**. *See* Pet. Br. at 9-10. Similarly, even if the police had the authority to search a vehicle parked in a public lot, that would not give them permission to frisk the owner's **person** for his keys when he returns with his groceries. Nor would the automobile exception give the police permission to rummage through his **papers and effects** hoping to find a keycode, if the vehicle were parked, for example, behind a gated fence at an

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[9] *See* Wizard of Oz, https://www.youtube.com/watch?v=PHQLQ1Rc_Js.

office building or storage unit. The Supreme Court of Virginia's theory seems to be that the automobile exception can be used to excuse the police from obtaining a warrant before they violate anything or anyone that stands in the way of getting at the vehicle to be searched. Viewed in that way, the "automobile exception" is not a "narrow exception" to the warrant requirement, but rather a death blow to the warrant requirement whenever an automobile is in the vicinity.

Of course, a warrant is not simply about requiring a showing of probable cause. Rather, the police must also specify the place to be searched and the things to be seized. The purpose of a warrant, then, is to restrict the Government from going beyond the scope of that for which probable cause exists, such as occurred in this case. By eliminating the warrant requirement any time an automobile is involved, the Supreme Court of Virginia has removed an important limitation on police activity. Whereas applying for a warrant requires the Government to announce its legal and factual theory and establishes a prior commitment, the absence of a warrant absolves the Government from being pinned down in any way and, if needed, permits the police to say whatever is required to justify their actions after they have finished searching and seizing.

Moreover, the automobile exception has given law enforcement officials a dangerous tool to employ that jeopardizes other protections in the Bill of Rights, including Second Amendment rights. For example, in Cady v. Dombrowski, 413 U.S. 433 (1973), the Court was confronted with the search of a heavily damaged

automobile that had been towed to a service station. The vehicle was not inherently mobile and, indeed, was obviously immobile. *Id.* at 435-37. However, the Court nevertheless assumed that there was still an exigency, since the police suspected the vehicle to contain a firearm, and alleged a search was necessary supposedly to "'protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands.'" *Id.* at 443. To justify the expansion of the automobile exception to apply to a situation where the automobile had no mobility, the Court invented a new justification — that automobiles and their drivers are heavily and pervasively regulated. *Id.* at 441. Writing for the majority, Justice Rehnquist admitted "that this branch of the law is something less than a seamless web," *id.* at 440, admitting that the Court had now expanded the automobile exception to cases where none of the original justifications existed. *Id.* at 442-43.

C. Probable Cause that the Motorcycle Was Contraband Does Not Obviate the Warrant Requirement.

The Government goes to great lengths to argue that the police officers had probable cause to believe that the motorcycle at Collins' house was stolen at the time they entered Collins' property to check the VIN. Br. in Op. at 2-4. The Government argues that the police, believing Collins' motorcycle to be contraband, had the absolute right to search the motorcycle, "'without more.'" *See* Maryland v. Dyson, 527 U.S. 465, 467 (1999). Of course, if the police had probable cause to believe a carport contained a stolen weed

whacker instead of a motorcycle, they would not be permitted to trespass and rummage around for it without first obtaining a warrant. Indeed, even if an item is contraband (as was Collins' bike), and even if it is in plain view (as Collins' bike may have been), the police still have no right to enter private property to search or seize it. As this Court has held, "not only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself."[10] Horton v. California, 496 U.S. 128, 137 (1990). Indeed, the Court has held that "even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure."[11] Coolidge v. N.H., 403 U.S. 443, 468 (1971).

Accordingly, it does not really matter whether the police had probable cause to believe the motorcycle was stolen (and thus was contraband), probable cause to believe it was the vehicle that had eluded them (and arguably an instrumentality), or both, as the Government argues. Br. in Opp. at 15. In each situation, it is not the illegal nature or use of a vehicle

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[10] As Petitioner makes clear in his brief, the police had no such lawful right. Pet. Br. at 13-14 (discussion of Jardines).

[11] The Government attempts to liken this case to New York v. Class, 475 U.S. 106 (1986) where this Court held that a VIN number is "ordinarily in plain view" and thus subject to no reasonable expectation of privacy. Class at 114. Of course, even though the officer may lawfully read the VIN number, he still "must also have a lawful right of access to the object itself." Horton at 137.

which permits the police to search and seize on private property — according to Horton and Coolidge — it is its vehicular nature. Indeed, it is the automobile exception itself that the Government argues permits it to dispense with the warrant requirement and enter the curtilage of a home and rummage around within.

CONCLUSION

For the foregoing reasons, the decision of the Virginia Supreme Court should be reversed.

Respectfully submitted,

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